

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/11/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.7153 OF 1997

1. M. Narasimha Reddy
2. G.S. Gopalakrishnan
3. Tmt. Rajamma
4. M. Krishnappa
5. L. Nachiappan .. Petitioners

-Vs-

1. The Government of Tamil Nadu,
rep. by its Secretary,
Industries Department,
Fort St. George,
Chennai 600 009.

2. Sub-Collector and Land
Acquisition Officer,
Hosur,
Dharmapuri District. .. Respondents

Petition filed under Article 226 of the Constitution of India for the
issuance of Writ of Certiorari as stated therein.

For Petitioner : Mr.A.S. Vijayaraghavan

For Respondents : Mrs.N.G. Kalaiselvi
Special Govt. Pleader

:J U D G M E N T

The petitioners have challenged the land acquisition
Notification and Declaration made under Sections 4 & 6 of the Land Acquisition
Act in respect of 39 cents out of 69 cents in S.No.671/1, Hosur Village and
Taluk. The aforesaid land along with other undisputed land belonged to K.C.
Maran, S.T. Thotlan, C. Kondappa Naidu, B.N. Nandish and R. Venkatesan,
who had purchased the same from M. Narayana Chetty under registered sale deed
dated 9.4.1975. On 23.4.1975, R. Venkatesan released his 1/5th interest in
favour of other four persons and thereafter by document dated 2.5.1979, C.

Kondappa Naidu sold his 1/4th interest in favour of one M. Balu, who thus became the joint owner of the land along with K.C. Maran, S.T. Thotlan, and B.N. Nandish. In a suit for partition numbered as O.S.No.75 of 1987, a preliminary decree was passed on the basis of a compromise and subsequently final decree was passed on 20.4.1987 wherein the disputed land along with some other land was allotted to the share of K.C. Maran, S.T. Thotlan, and B.N. Nandish. On the basis of their application, a layout plan was approved by the Executive Officer, selection grade town panchayat, Hosur on observation of all other formal requirements. The petitioners have purchased the disputed property along with other properties under various sale deeds. Subsequently, notification under Section 4(1) of the Land Acquisition Act (hereinafter referred to as the Act) was issued indicating Kondappa Naidu (vendor of the petitioners) and 10 others as owners. However, the other co-owners K.C. Maran, S.T. Thotlan, and B.N. Nandish were not shown as interested owners in 4(1) notification or in the subsequent declaration under Section 6 of the Act or in the subsequent award passed by the second respondent. Ten other owners indicated, have no right, title or interest in respect of the disputed 39 cents of land. It is alleged that the aforesaid Kondappa Naidu died on 21.9.1987. 4(1) notification is dated 2.11.1988 which was published in the Gazette on 23.11.1988 and declaration under Section 6 dated 18.12.1989 was published in the Gazette on 19.12.1989. The award was passed on 19.12.1991 and possession is stated to have been taken on 13.8.1992.

2. The contention of the petitioners is to the effect that without indicating the names of the owners of the property, 4(1) notification was made in the name of a dead person and subsequently without following the procedure contemplated under Section 5-A read with Rules, Section 6 declaration was also made in the name of a dead person, and therefore, 4(1) notification along with the subsequent award is to be declared as void. The writ petition is filed when possession of the present petitioners is sought to be disturbed.

3. Counter affidavit has been filed on behalf of the respondents. It has been indicated that the name of Kondappa Naidu had been shown as the owner in the patta and the petitioners should have applied to the Tahsildar for inclusion of their patta. It has been stated that :
□ . . . In the absence of the names of the writ petitioners, no notices were issued. The notification under section 4(1) of the Act was published in the Official Gazette, in the dailies in regional language. further the substances of the notification under section 4(1) of the Act was published in the village by beat of tom-tom and by affixure in the notice boards of the offices of the Sub-Collector, Tahsildar, Sub-Inspector of Police, Sub-Registrar of Hosur. Notices issued under section 5-A of the Act were also served and published in the above manner.□

It has been further stated that :

□ Notices for 5-A enquiry was sent to the parties in letter No.Roc.5 953/87 dated 14.02.89 and were duly served on all the parties on completion of the 5-A enquiry.□

Possession had been taken in August, 1992.

4. From the death certificate filed on behalf of the petitioners it appears that C. Kondappa Naidu died on 21.9.1987 and the necessary registration was made on 22.9.1987, the very next day. The assertion that he had died on the said day has not been refuted in the counter affidavit filed on behalf of the State. It is thus apparent that the person who has shown to be the owner had in fact died much prior to the date of issuance of notification under Section 4(1) of the Act. The mere fact that 4 (1) notification has been issued in the name of a dead person by itself may not vitiate the subsequent proceedings as by then the persons responsible for issuing such notification may not be aware about such death. The ordinary principle that a proceeding against a dead person is void even though applicable to a regular suit or other proceedings, such principle cannot be made applicable to 4(1) notification under the Land Acquisition Act or proceedings under the Revenue Recovery Act inasmuch as in such proceedings the liability runs with the land and the officials responsible for issuing such notification or notices may not be aware of the death of the recorded landholder. Merely because 4(1) notification was in the name of a dead person it does not vitiate the subsequent proceedings.

5. The question however remains as to whether 5-A enquiry was held in accordance with law.

6. Under Rule (3) of the Rules, notice relating to 5-A enquiry is required to be served on the person interested. It is the assertion of the respondents that notice under Section 5-A has been issued and duly served. The manner of such service indicated in the counter nor any material has been produced to show the manner of service. If Kondappa Naidu was dead by the time of notification under Section 4(1), it is not understood as to how subsequently notice relating to enquiry under Section 5-A issued under Rule (3) was served. From the materials on record, it is thus evident that notice relating to 5 -A enquiry was not served on any of the predecessor-in-interest of the petitioners. It has been held in many cases of this Court that the Rules relating to service of notice, as contemplated under Rule 3, are mandatory. In the present case, it is obvious that no attempt has been made to serve notice on the person named to be the owner of the property.

7. Learned counsel for the respondents has placed reliance upon two decisions of the Supreme Court reported in A.I.R. 1996 SC 540 (SMT. SNEH PRABHA ETC., v. STATE OF U.P. AND ANOTHER) and AIR 1995 SC 812 (UNION OF INDIA v. SHIVKUMAR BHARGAVA) and contended that since the petitioners had purchased the land after notification under Section 4(1) of the Act, they cannot claim any right on the basis of such purchasers.

8. From the counter affidavit of the respondents, it is apparent that notification under Section 4(1) was published in the Gazette on 23 .11.1988, whereas the first petitioner purchased the property under the registered sale deed dated 16.11.1998. Petitioner No.5 purchased the property by sale deed dated 28.3.1989, which is after 4(1) notification but before declaration under Section 6, which was published in the Gazette on 19.12.1989.

Petitioner No.4 purchased the property by registered sale deed dated 24.2.1999, Petitioner No.2 purchased the property by registered sale deed dated 26.10.1994 and Petitioner No.3 purchased by sale deed dated 4.10.1996. The three latter sale deeds are after the award enquiry was completed and after possession was stated to have been taken on 13.8.1992. The question raised by the counsel for the respondents has to be examined in the aforesaid factual background.

9. Two decisions of the Supreme Court, relied upon by the respondents, related to the question of availing the benefit under the land policy issued by the State Government. As per the policy, the owner of the land would be entitled to certain land in lieu of the land taken by the Government. It was held that the person who purchased the property after publication of 4(1) notification did so at his own peril. Purchase by such person is not binding on the State Government or the beneficiary.

10. In A.I.R. 1996 SC 540 (cited supra), it was observed :

□ . . . If any subsequent purchaser acquires land, his/her only right would be to subject to the provisions of the Act and/or to receive compensation for the land. In a recent judgment, this Court in Union of India v. Shivkumar Bhargava, considered the controversy and held that a person who purchases land subsequent to the notification is not entitled to alternative site. It is seen that the Land Policy expressly conferred that right only on that person whose land was acquired. In other words, the person must be the owner of the land on the date on which notification under Section 4(1) was published. By necessary implication, the subsequent purchaser was elbowed out from the policy and became disentitled to the benefit of the Land Policy.□

11. In the present case, the question is not whether the purchaser would be entitled to the benefit of any land policy regarding allotment of alternative site. Purchasers are trying to impugn the land notification on the ground that mandatory provisions have not been complied with. Petitioners 2,3 and 4, who have admittedly purchased the property after award has been passed and after the land has been vested with the Government, cannot claim the right to impugn the notification on the basis of any defect in the land acquisition process. However, the petitioner No.1, who purchased the property prior to publication of 4(1) notification in the Gazette and petitioner No.5, who purchased the property after 4(1) notification, but before declaration under Section 6, however, stand on a different footing. It cannot be said that sale deeds in their favour were void. By virtue of the sale deeds they stepped into the shoes of their vendors. Since the vendors had the right to impugn the land acquisition proceedings, such two purchasers, namely, the petitioner Nos.1 and 5 have similar right to impugn the land acquisition proceedings on any legal ground available to them.

12. It is not laid down anywhere in the two decisions of the Supreme Court that after publication of notification under Section 4(1), the owner of the property loses right to deal with the property in any manner. The only liability is that the purchaser purchase at his own peril and the risk of acquisition proceedings looms large. There is no provision in the

Land Acquisition Act nor there is any observation in the decisions of the Supreme Court laying down a principle that any alienation of the property after 4(1) notification is void. Such alienation is not binding on the State or the beneficiary of the land acquisition in the sense that it would be open to the State Government to continue with the land acquisition in accordance with law notwithstanding the sale in favour of any body. The purchasers can always impugn the proceedings on the ground that notices have not been served on their vendors in accordance with law.

13. For the aforesaid reasons, the writ petition is allowed in part and the land acquisition proceedings so far as they relate to properties purchased by the 1st and 5th petitioners, namely Narasimha Reddy and Nachiapan, shall be taken to be invalid. No costs.

Index : Yes

Internet : Yes

dpk/ksr

To

1. The Government of Tamil Nadu,
rep. by its Secretary,
Industries Department,
Fort St. George,
Chennai 600 009.

2. Sub-Collector and Land
Acquisition Officer,
Hosur, Dharmapuri District.

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